

# ARTICLES

## **“OH LORD WON’T YOU BUY ME A MERCEDES BENZ?”<sup>1</sup>: A COMPARISON OF STATE WRONGFUL CONVICTION COMPENSATION STATUTES**

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1. JANIS JOPLIN, *MERCEDES BENZ* (SUNSET SOUND RECORDING STUDIO 1971). See generally Chris Neal, *The Story Behind Janis Joplin's Mercedes Benz*, <http://www.performingsongwriter.com/Janis-joplin-mercedes-benz/> (last visited Aug. 18, 2012) (“Mercedes Benz is a lonely blues tune about the illusory happiness promised (but rarely delivered) by the pursuit of worldly goods . . .”).

## I. INTRODUCTION

Post-conviction DNA testing has resulted in the exoneration of 297 individuals in the United States.<sup>2</sup> Moreover, the number of those exonerated by DNA testing continues to increase every year.<sup>3</sup> Most individuals exonerated by DNA testing served a considerable amount of time in prison separated from family and friends.<sup>4</sup> According to research conducted by the Innocence Project,<sup>5</sup> “[t]hose proven to have been wrongfully convicted through post-conviction DNA testing spent, on average, 13.5 years behind bars.”<sup>6</sup> Significantly, many walked out of prison with no assistance to facilitate their reentry into society.

Of those exonerated by DNA testing, “40 [percent] have not received any form of assistance” upon exoneration or after.<sup>7</sup> Furthermore, “[o]f the 60 [percent] that did receive compensation, only about half received it

2. *Innocence Project Case Profiles*, INNOCENCE PROJECT, <http://www.innocenceproject.org/know/> (last visited Sept. 14, 2012); see also *Browse the Profiles*, INNOCENCE PROJECT, <http://www.innocenceproject.org/know/Browse-Profiles.php> (last visited Sept. 14, 2012) (showing the complete list of individuals exonerated by post-conviction DNA testing and summaries of their cases).

3. See *Innocence Project Case Profiles*, *supra* note 2 (providing a chart with the number of exonerations per year dating back to 1989).

4. See *id.* (explaining that the average sentence served by those exonerated was 13 years).

5. See *About the Innocence Project*, INNOCENCE PROJECT, <http://www.innocenceproject.org/about/> (last visited Sept. 14, 2012) (describing the Innocence Project as an organization aiming to exonerate those erroneously convicted through the use of DNA testing and to raise awareness of injustices in the legal system).

The Innocence Project is a non-profit legal clinic affiliated with the Benjamin N. Cardozo School of Law at Yeshiva University and created by Barry C. Scheck and Peter J. Neufeld in 1992. The project is a national litigation and public policy organization dedicated to exonerating wrongfully convicted people through DNA testing and reforming the criminal justice system to prevent future injustice.

*Id.*

6. *Compensating the Wrongly Convicted*, INNOCENCE PROJECT, [http://www.innocenceproject.org/Content/Compensating\\_The\\_Wrongly\\_Convicted.php](http://www.innocenceproject.org/Content/Compensating_The_Wrongly_Convicted.php) (last visited Aug. 18, 2012).

The agony of prison life and the complete loss of freedom are only compounded by the feelings of what might have been, but for the wrongful conviction. Deprived for years of family and friends and the ability to establish oneself professionally, the nightmare does not end upon release. With no money, housing, transportation, health services or insurance, and a criminal record that is rarely cleared despite innocence, the punishment lingers long after innocence has been proven.

*Id.*

7. INNOCENCE PROJECT, BENJAMIN N. CARDOZO SCH. OF LAW, MAKING UP FOR LOST TIME: WHAT THE WRONGFULLY CONVICTED ENDURE AND HOW TO PROVIDE FAIR COMPENSATION 15 (2009), available at [http://www.innocenceproject.org/docs/Innocence\\_Project\\_Compensation\\_Report.pdf](http://www.innocenceproject.org/docs/Innocence_Project_Compensation_Report.pdf).

through a state compensation statute.”<sup>8</sup> “The others had to file a lawsuit, pursue special legislation, or try to make do without any assistance.”<sup>9</sup> Most of those that did receive some form of compensation had to wait a considerable amount of time before receiving the award.<sup>10</sup>

Wrongfully convicted exonerees,<sup>11</sup> although grateful for the scientific advances that restored their freedom, face many challenging obstacles when entering back into society. Once the prison doors open, exonerees find few community support systems.<sup>12</sup> Almost all must cope with at least some levels of psychological, physical, and financial difficulties.<sup>13</sup>

8. *Id.*

9. *Id.*; see also Press Release, Innocence Project, 81 percent of Exonerated People Who Have Been Compensated Under State Laws Received Less Than the Federal Standard, New Innocence Project Report Shows (Dec. 2, 2009) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*), available at [http://www.innocenceproject.org/Content/81\\_of\\_Exonerated\\_People\\_Who\\_Have\\_Been\\_Compensated\\_Under\\_State\\_Laws\\_Received\\_Less\\_Than\\_the\\_Federal\\_Standard\\_\\_New\\_Innocence\\_Project\\_Report\\_Shows.php](http://www.innocenceproject.org/Content/81_of_Exonerated_People_Who_Have_Been_Compensated_Under_State_Laws_Received_Less_Than_the_Federal_Standard__New_Innocence_Project_Report_Shows.php) (“In several states, inmates must file civil lawsuits in order to be compensated. In others, the legislature will consider a ‘private bill’ to compensate one individual, rather than creating a policy for compensation any time someone is proven innocent.”).

10. See *Colorado Exoneree Struggles Without Compensation*, INNOCENCE BLOG (July 6, 2012, 6:30 PM), [http://www.innocenceproject.org/Content/Colorado\\_Exoneree\\_Struggles\\_without\\_Compensation.php](http://www.innocenceproject.org/Content/Colorado_Exoneree_Struggles_without_Compensation.php) (“On average, the exonerated wait three years to receive the funds . . .”); see also Nancy Lofholm, *Prosecutors: Colorado Must Compensate Prisoners Freed By DNA Evidence*, THE DENVER POST (July 5, 2012), [http://www.denverpost.com/breakingnews/ci\\_21014720/prosecutors-colorado-must-compensate-prisoners-freed-by-dna](http://www.denverpost.com/breakingnews/ci_21014720/prosecutors-colorado-must-compensate-prisoners-freed-by-dna) (detailing the experiences of one man exonerated by DNA evidence and calling for legislative reform in regard to compensation for those wrongly convicted).

11. The use of the word “exoneree” in this article refers to individuals who are factually innocent of the crimes for which they were convicted; proof of their innocence was based on DNA testing. See *The Innocence List*, DEATH PENALTY INFORMATION CENTER, <http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row> (last visited Sept. 14, 2012) (describing the requirements a defendant must meet to be added to the Innocence List).

For Inclusion on the DPIC's [Death Penalty Information Center] Innocence List: Defendants must have been convicted, sentenced to death and subsequently either

- (a) their conviction was overturned *AND*
  - i. they were acquitted at re-trial or
  - ii. all charges were dropped
- (b) they were given an absolute pardon by the governor based on new evidence of innocence

*Id.* <http://floridainnocence.org/content/?p=1095> (defining the legal status of an exoneree as one who has had their conviction overturned or has been granted a pardon by the governor).

12. See Kevin Davis, *After Years, Even Decades, The Exonerated Leave Prison Walls Behind—Only to Find New Barriers*, A.B.A. J. (Jan. 1, 2011), [http://www.abajournal.com/magazine/article/after\\_years\\_even\\_decades\\_the\\_exonerated\\_leave\\_prison\\_walls\\_behind/](http://www.abajournal.com/magazine/article/after_years_even_decades_the_exonerated_leave_prison_walls_behind/) (explaining that exonerees are often left to fend for themselves).

13. INNOCENCE PROJECT, *supra* note 7, at 7–9.

The most daunting concerns for many of these exonerees are for the most basic and fundamental human needs such as housing, food, clothing, medical costs, transportation, identification documents, and other necessities.<sup>14</sup> Often, these individuals no longer have family or friends available to serve as their support network.<sup>15</sup> In such instances, these individuals must look to social service agencies or nonprofit organizations for assistance. Unfortunately, exonerees are not always eligible for social service benefits, and many times nonprofit organizations are without funds to help these individuals with the degree of assistance they require.<sup>16</sup>

A large number of exonerees leave prison with health problems due to long years of incarceration.<sup>17</sup> This is often attributed to poor prison conditions and health care.<sup>18</sup> If an exoneree leaves prison with an existing health concern such as diabetes, high blood pressure, heart disease, kidney disease, or cancer, he or she may have difficulty in receiving the necessary funds for medications and follow up care.<sup>19</sup> In many instances, exonerees are concerned for their existence outside the prison walls because health care benefits are generally tied to employment; such benefits are both difficult to acquire and expensive to receive.<sup>20</sup> Lacking the current educational and job training skills necessary to acquire the type of employment that provides health care benefits,<sup>21</sup> exonerees often find that even if they can manage to find some form of health benefits, most new employee benefit programs do not cover pre-existing conditions.<sup>22</sup>

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14. *Compensating the Wrongly Convicted*, *supra* note 6. Due to the lack of “money, housing, transportation, health services or insurance, and a criminal record that is rarely cleared despite innocence, the punishment lingers long after innocence has been proven.” *Id.*

15. See INNOCENCE PROJECT, *supra* note 7, at 3 (stating that during their time of incarceration, inmates’ family members could pass away, their children grow older, and their spouses and partners move on).

16. See *id.* (addressing exonerees’ limited access to services, like job placement and temporary housing, available to parolees).

17. See *id.* at 8 (stressing the poor quality of medical care provided to prisoners, which results in exacerbated existing conditions and untreated ailments).

18. *Id.* “Medical care provided to prisoners is notoriously poor, exacerbating existing conditions and leaving others untreated.” *Id.*

19. *Id.* “Given the lack of available healthcare, many exonerees find that they have less coverage than they had in prison.” *Id.*

20. See *id.* (asserting that for the few states that offer Medicaid to exonerees, those that are eligible for the program are often discouraged because of the bureaucracy and paperwork required).

21. *Id.*

22. See Sandra D. Westervelt & Kimberly J. Cook, *Framing Innocents: The Wrongly Convicted as Victims of State Harm*, 53 CRIME, L. & SOC. CHANGE 259 (2010), [http://libres.uncg.edu/ir/uncg/f/S\\_Westervelt\\_Framing\\_2011.pdf](http://libres.uncg.edu/ir/uncg/f/S_Westervelt_Framing_2011.pdf) (“The self-employed exonerees strug-

The psychological effects of serving time in prison for a crime they did not commit often imposes a heavy burden on the wrongfully convicted.<sup>23</sup> Unjustly serving time in prison often leaves exonerees angry, bitter, frustrated, confused, and scared.<sup>24</sup> Over the long term of their incarceration, many inmates experience personality changes, difficulty in coping with confinement and loss of freedom, and feelings of deep loss and grief for the life they once had.<sup>25</sup> Exoneration often brings conflicting feelings: feeling of relief and happiness on one hand, and feelings of resentment and anger on the other.<sup>26</sup>

Most often, no one apologizes to the exonerees nor takes blame for their situation.<sup>27</sup> In fact, often the public, family members, friends, law enforcement, and others refuse to accept that the exoneree is actually innocent.<sup>28</sup> This stigma leaves the exonerees alone with no one to assist them with recovering what they have lost. An exoneree must often learn to deal with the stigma associated with the crime from which they were exonerated even though they were not the one who committed the crime.<sup>29</sup>

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gle to pay insurance premiums and may have pre-existing conditions that put premiums out of range.”).

23. See INNOCENCE PROJECT, *supra* note 7, at 8 (“All prisoners are vulnerable to psychological problems. Exonerees also struggle with psychological dissonance of having been profoundly wronged by society.”).

24. See *id.* at 7 (asserting that the symptoms of post-traumatic stress disorder, a psychological disorder typically associated with war veterans, also adversely affects the wrongfully convicted).

25. See *id.* at 8 (identifying that devastating losses and thoughts of “what might have been” haunt the exonerated for their entire lives); see also CALVIN C. JOHNSON, JR. & GREG HAMPIKIAN, *EXIT TO FREEDOM* 190 (2003) (narrating the experiences of an inmate whose frustrating experiences during his incarceration manifested in a bitterness and madness that “haunt[ed] [him] each minute”); TIM JUNKIN, *BLOODSWORTH* 179 (2004) (illustrating how an inmate was recognized as acclimating to the prison environment after having an episode of brutal violence against another inmate); ERIC VOLZ, *GRINGO NIGHTMARE* (2010); JENNIFER THOMPSON-CANNINO ET AL., *PICKING COTTON: OUR MEMOIR OF JUSTICE* 115 (2009) (detailing an inmate’s fear that prison would transform him into someone unlike himself).

26. See also INNOCENCE PROJECT, *supra* note 7, at 7 (describing some of the psychological challenges many exonerees face after release).

27. See Abigail Penzell, *Apology in the Context of Wrongful Conviction: Why the System Should Say It’s Sorry*, 9 CARDOZO J. CONFLICT RESOL. 145, 145 (2007), available at <http://cojcr.org/vol9no1/145-162.pdf> (explaining how frequently the system fails to apologize to the exonerees).

28. See INNOCENCE PROJECT, *supra* note 7, at 6 (quoting exoneree Michael Williams, whose experience was that people presumed him guilty based on the fact that he had spent so many years in prison).

29. Sandra D. Westervelt & Kimberly J. Cook, *Coping with Innocence After Death Row*, 7 CONTEXTS 32, 35 (2008), available at <http://www.r-a-e.org/sites/default/files/docs/WesterveltandCook2008ContextsCopingWithInnocence.pdf>. “Learning to manage stigma

Michigan DNA exoneree, Ken Wyniemko<sup>30</sup> voiced how this stigma was one of the most difficult things for him to deal with after his exoneration.<sup>31</sup> He shared that no matter where he went, he felt people were looking at him and talking about him behind his back—believing he was released from prison based on a technicality.<sup>32</sup> Employers would not hire him because his case was high profile and customers might believe he was really guilty.<sup>33</sup> Mr. Wyniemko found a certain degree of closure on this issue when the actual perpetrator of the crime was finally located based on a DNA match.<sup>34</sup> Mr. Wyniemko believes that even though the actual perpetrator of the crime for which he was wrongfully convicted was found, some still believe he must have done “something” that led the police to suspect him in the first place.<sup>35</sup> While Mr. Wyniemko believes he finally has some closure, to some degree he still lives with the stigma of the crime for which he was wrongfully convicted.

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is a challenge for exonerees . . . .” *Id.* “Several exonerees [are] greeted with fear from neighbors, suspicion from family, and hate messages from others.” *Id.* “Some exonerees move away from the communities in which they were tried, hoping anonymity will insulate them from stigma.” *Id.* “Without an apology or formal ‘delabeling,’ exonerees struggle to reshape their identities as ‘innocent . . . .’” *Id.*

30. See *Know the Cases, Kenneth Wyniemko*, INNOCENCE PROJECT, [http://www.innocenceproject.org/Content/Kenneth\\_Wyniemko.php](http://www.innocenceproject.org/Content/Kenneth_Wyniemko.php) (last visited Sept. 14, 2012) (providing a brief synopsis of Wyniemko’s case and the circumstances of his exoneration in 2003, after nine years in prison); see also *Exoneree Ken Wyniemko to Speak Thursday at the University of South Dakota*, INNOCENCE BLOG (Feb. 14, 2007), <http://www.innocenceproject.org/news/Blog-Search.php?check=true&tag=251>. Kenneth Wyniemko was convicted of fifteen counts of first-degree criminal sexual conduct and sentenced to forty to sixty years in prison. *Id.* The victim said that she had barely seen her assailant, however, Wyniemko was convicted based on a composite sketch and the false testimony of a jailhouse snitch who alleged that Wyniemko had confessed to the crime. *Id.* In 2003, after serving nine years in prison, Wyniemko’s conviction was dismissed after post-conviction DNA testing proved his innocence. *Id.*

31. See generally INNOCENCE PROJECT, *supra* note 7, at 11 (pointing out that many people do not understand how a person could have been in prison for so many years and yet be innocent).

32. Interview with Kenneth Wyniemko, Exoneree (2003–2004). As my client, conversations on this topic occurred over the first two years after his exoneration – in 2003 and 2004.

33. *Id.*

34. PROSECUTOR SAYS REAL PERPETRATOR IDENTIFIED IN 2003 EXONERATION CASE, INNOCENCE BLOG (Aug. 20, 2008, 5:15 PM), [http://www.innocenceproject.org/Content/Prosecutor\\_says\\_real\\_perpetrator\\_identified\\_in\\_2003\\_exoneration\\_case.php](http://www.innocenceproject.org/Content/Prosecutor_says_real_perpetrator_identified_in_2003_exoneration_case.php). The statute of limitations for rape had already expired, but the prosecutor announced that the real perpetrator would still be charged for other sex crimes. *Id.*

35. Interview with Kenneth Wyniemko, *supra* note 33.

After attending numerous conferences involving exonerees,<sup>36</sup> it is clear that many exonerees consider themselves victims of the system. More specifically, they view themselves as victims similar to the victims of the crimes for which they were convicted. Some exonerees spoke about their continued feelings of victimization even after their release. For instance, the crime victim's family often does not believe in the exoneree's innocence. In some instances, disbelieving family members have been known to threaten retaliation. In two of Michigan's DNA exoneration cases police continued to harass and follow the exonerees for some time after their release.<sup>37</sup>

In addition, many exonerees were incarcerated at a young age.<sup>38</sup> They moved through their adult years in a tightly regimented and controlled institutional facility. While incarcerated, virtually every aspect of their lives was controlled; they were told when to wake, when and what to eat, when to shower, when to sleep, when to exercise, and with whom they could associate. As a result of this institutionalization, once released, exonerees need help with basic, everyday skills that most of us take for granted.<sup>39</sup> For instance, basic skills related to modern technology—par-

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36. The author has attended the following conferences: *National Innocence Project Policy Network Conference*, New York, N.Y. (June 2006); *Innocence Network Conference*, Houston, Tex. (Mar. 2009); *Innocence Network Conference*, Kansas City, Mo. (Mar. 2012).

37. Like Winiemko, Nathaniel Hatchett has also complained that police followed and harassed him for months after his release. See *Know the Cases, Nathaniel Hatchett*, INNOCENCE PROJECT, [http://www.innocenceproject.org/Content/Nathaniel\\_Hatchett.php](http://www.innocenceproject.org/Content/Nathaniel_Hatchett.php) (last visited Sept. 14, 2012). In 1998, "Nathaniel Hatchett was [seventeen] years old when he was arrested in Michigan for a rape he didn't commit." *Id.* Based on "false admissions and the fact that Hatchett was arrested driving the victim's car, he was charged with kidnapping, carjacking, armed robbery and criminal sexual conduct." *Id.* In 2006, the Cooley Innocence Project accepted Hatchett's case and located the evidence from the case in the State Police crime lab. *Id.* In 2008, DNA testing was conducted on the evidence and confirmed that the semen sample on the vaginal swab excluded Hatchett. *Id.* Hatchett was released from prison on April 14, 2008. *Id.*

38. See Nat'l Res. Ctr. on Children & Families of the Incarcerated, *An Overview of Statistics*, FAMILY & CORR. NETWORK, <http://www.fcnetwork.org/Resource%20Center/overview-statistics.htm> (last visited Sept. 14, 2012) ("More than half of state and federal prison inmates are between the ages of 18 and 34."); see also George Coppolo, *Average Age of Inmates*, OLD RESEARCH REPORT (Mar. 6, 2003), <http://www.cga.ct.gov/2003/rpt/2003-R-0260.htm> (showing that in Connecticut, the average age of entering prisoners was between twenty-nine and thirty-one); *Quick Facts About the Florida Department of Corrections*, FLA. DEP'T OF CORR., <http://www.dc.state.fl.us/oth/Quickfacts.html> (last updated Aug. 2012) (stating that the average age of inmates separated by the specific crime they were charged with begins as young as twenty-four).

39. See N. Cal. Innocence Project, *Help the Wrongfully Convicted Restore Their Lives!*, INDIEGOGO, <http://www.indiegogo.com/ncipspeakersbureau> (last visited Sept. 14, 2012) (highlighting the Northern California Innocence Project's Speakers Bureau, a program to help exonerees develop their speaking skills); DALLAS CAN DO BETTER, <http://www.dallascandobetter.org/projects/> (showcasing Project Exoneration, a program whose

ticularly the use of a computer—and other essential job-related skills often pose problems for them.<sup>40</sup> The Innocence Project's studies of exonerated cases have revealed that many suffer from a type of post-traumatic stress syndrome that makes everyday life difficult to manage.<sup>41</sup>

Due to the challenges exonerees face, some type of assistance is needed to help them transition smoothly back into life outside the prison system and to become productive members of society. Accordingly, compensation statutes have been enacted in twenty-seven states and the District of Columbia;<sup>42</sup> however, twenty-three states still offer no aid to these individuals.<sup>43</sup> Innocence Projects and private individuals and organizations are working to pass compensation legislation in the remaining states.<sup>44</sup>

Legislatures will often only consider “private bills” to benefit one individual rather than address the issue from a public policy standpoint to

objective is to help newly released exonerees transition back to society through participating in several different seminars, including interviewing skills and handling finances).

40. INNOCENCE PROJECT, *supra* note 7, at 9.

41. *Id.*

42. ALA. CODE §§ 29-2-150 to -165 (LexisNexis 2003); CAL. PENAL CODE §§ 4900-06 (Deering 2008); CONN. GEN. STAT. ANN. § 54-102uu (West 2009); D.C. CODE §§ 2-421 to -425 (LexisNexis 2001); FLA. STAT. ANN. §§ 961.01-.07 (West 2012); 705 ILL. COMP. STAT. ANN. 505/8 (LexisNexis Supp. 2012); IOWA CODE § 663A.1 (2011); LA. REV. STAT. ANN. § 15:572.8 (2012), and H.B. 167, 2012 Leg., Reg. Sess. (La. 2012); ME. REV. STAT. ANN. tit. 14, §§ 8241-43 (2003); MD. CODE ANN., STATE FIN. & PROC. § 10-501 (LexisNexis 2009); MASS. GEN. LAWS ANN. ch. 258D, §§ 1-2 (West, Westlaw through Chapter 141, except for Chapter 139, of the 2012 2nd Annual Session); MISS. CODE ANN. §§ 11-44-1 to -15 (Supp. 2011); MO. ANN. STAT. § 650.058 (Supp. 2012); MONT. CODE ANN. § 53-1-214 (2011); NEB. REV. STAT. ANN. §§ 29-4601, 4605, 4608 (West, Westlaw through the 102nd Legislature Second Regular Session 2012); N.H. REV. STAT. ANN. § 541-B:14 (LexisNexis Supp. 2011); N.J. STAT. ANN. §§ 52:4C-1-6 (West 2008); N.Y. CT. CL. ACT § 8-b (Consol. 2004); N.C. GEN. STAT. §§ 148-82, 84 (2011); OHIO REV. CODE ANN. § 2743.48(d) (LexisNexis 2008); OKLA. STAT. ANN. tit. 51, § 154(B) (West 2003); TENN. CODE ANN. § 9-8-108(a)(7) (1999); TEX. CIV. PRAC. & REM. CODE ANN. §§ 103.001, 154 (West Supp. 2012); UTAH CODE ANN. § 78B-9-405 (LexisNexis 2008); VT. STAT. ANN. tit. 13, §§ 5572-77 (2009); VA. CODE ANN. §§ 8.01-195.10 to -.12 (2007); W. VA. CODE ANN. § 14-2-13a (LexisNexis 2009); WIS. STAT. ANN. § 775.05 (West 2009); *After Exoneration*, INNOCENCE PROJECT, <http://www.innocenceproject.org/know/After-Exoneration.php> (last visited Aug. 24, 2012).

43. “The following [twenty-three] states do not [have compensation statutes]: Alaska, Arizona, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Michigan, Minnesota, Nevada, New Mexico, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Washington and Wyoming.” *Compensating the Wrongly Convicted*, *supra* note 6.

44. See generally *Innocence Network Member Organizations*, INNOCENCE NETWORK, <http://www.innocencenetwork.org/members> (listing organizations by state and country that work toward helping inmates with exoneration issues, including states that do not yet have compensation statutes for exonerated inmates).



compensate many exonerees.<sup>45</sup> For example, I testified many times before both the State Senate and House Judiciary Committees of Michigan over a six-year period, requesting support of a state statute for compensation. Numerous proposed bills for exoneree compensation were presented to the legislature over this period of time.<sup>46</sup> Despite explaining the dire situation of Michigan's post-release, we have been unsuccessful in obtaining the support to pass a compensation statute. Often the debate as to whether a proposed bill should be enacted centers around whether the bill goes too far, or not far enough, towards the goal.<sup>47</sup>

The purpose of this Article is to compare state compensation statutes in an effort to assist those working to enact compensation legislation. Inevitably, legislators want to know what other states are doing and the content of other state compensation statutes. It is helpful for those advocating for state legislation to be able to compare the existing twenty-eight statutes. For that reason, this Article is organized to be most helpful in comparing the subject matter and provisions most often of concern to legislators and to those advocating for compensation legislation when deciding what to consider and include in their own state compensation statute.<sup>48</sup>

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45. Press Release, The Innocence Project, Only 27 States Compensate the Wrongfully Convicted; Even Among Those that Do Have Laws on the Books, Financial Support and Social Services Fall Far Short (Dec. 2, 2009) (on file with the author), available at [http://www.innocenceproject.org/Content/81\\_of\\_Exonerated\\_People\\_Who\\_Have\\_Been\\_Compensated\\_Under\\_State\\_Laws\\_Received\\_Less\\_Than\\_the\\_Federal\\_Standard\\_\\_New\\_Innocence\\_Project\\_Report\\_Shows.php](http://www.innocenceproject.org/Content/81_of_Exonerated_People_Who_Have_Been_Compensated_Under_State_Laws_Received_Less_Than_the_Federal_Standard__New_Innocence_Project_Report_Shows.php).

46. See generally S.B. 61, 96th Leg., Reg. Sess. (Mich. 2011) (proposing a state bill for compensation of exonerated inmates); Geoffrey Fattah, *Judiciary Committee Endorses Payments to Help Prisoners Who Were Exonerated*, DESERET NEWS (June 21, 2007, 12:00 AM), <http://www.deseretnews.com/article/680192611/Judiciary-committee-endorses-payments-to-help-prisoners-who-were-exonerated.html> (explaining Utah legislators' attempt at authoring and enforcing a compensation statute for exonerees); Pat Vaughn Tremmel, *Illinois Exonerees Discuss Roadblocks to Compensation*, NORTHWESTERN U. (Feb. 13, 2008), <http://www.northwestern.edu/newscenter/stories/2008/02/exoneree.html> (delineating Illinois' legislators strategy to discuss legislation to compensate exonerees).

47. See generally S.B. 61, 96th Leg., Reg. Sess. (Mich. 2011) (proposing a state bill for compensation of exonerated inmates); Geoffrey Fattah, *Judiciary Committee Endorses Payments to Help Prisoners Who Were Exonerated*, DESERET NEWS (June 21, 2007, 12:00 AM), <http://www.deseretnews.com/article/680192611/Judiciary-committee-endorses-payments-to-help-prisoners-who-were-exonerated.html> (explaining Utah legislators' attempt at authoring and enforcing a compensation statute for exonerees); Pat Vaughn Tremmel, *Illinois Exonerees Discuss Roadblocks to Compensation*, NORTHWESTERN U. (Feb. 13, 2008), <http://www.northwestern.edu/newscenter/stories/2008/02/exoneree.html> (delineating Illinois' legislators strategy to discuss legislation to compensate exonerees).

48. The number of compensation statutes and the differences between these statutes is not conducive to comparing every aspect of every statute; instead this article will compare only those aspects that are most commonly addressed among these statutes. Addi-

Noting that compensation statutes are not uniform, and some state statutes are poorly constructed, this Article will endeavor to address the common elements in compensation statutes, while also analyzing the elements most essential to a thorough compensation package. These points generally include where to file, time limits on filing, appointment of counsel and payment of fees, who can collect, offsets, tax exemptions, compensation amount and in what form, subrogation, and future claims.

## II. ANALYZING COMPENSATION STATUTES

### A. Eligibility Requirements

In every state, the exoneree is the individual who is entitled to compensation. However, compensation becomes complex when the exoneree passes away, because the decedent's heirs, friends, and family must resort to survival suits and wrongful death suits under regimented common law tort.<sup>49</sup> Only two states expressly prohibit an exoneree's estate, personal representative, or heirs from filing such a claim.<sup>50</sup>

#### 1. Who Can Collect

While the exoneree is alive only he or she can collect compensation, and if an exoneree dies prior to receiving the full amount of compensation in a state that does not pay compensation in a lump sum, only five states specifically allow for either the exoneree's estate, surviving spouse, surviving minor children, or other heirs to collect amounts still owed to the exoneree.<sup>51</sup> Tennessee limits such collection by providing only for the

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tionally, many of the statutes do not go into great detail in areas that often are of legislative concern. For example, Wisconsin's compensation statute contains only five short paragraphs in comparison to Louisiana's compensation statute that is composed of seventeen paragraphs. Compare WIS. STAT. ANN. § 775.05 (West 2009), with LA. REV. STAT. ANN. § 15:572.8 (2012).

49. Meghan Ryan, *Remedying Wrongful Execution*, 45 U. MICH. J.L. REFORM 261, 263 (2012).

50. See FLA. STAT. ANN. § 961.05 (West 2012) ("No estate of, or personal representative for, a decedent is entitled to apply on behalf of the decedent for compensation for wrongful incarceration."); see also VA. CODE ANN. § 801-195.10(A) (2007) ("No estate of or personal representative for a decedent shall be entitled to seek a claim for compensation for wrongful incarceration.").

51. See ALA. CODE § 29-2-160(a) (LexisNexis 2003) ("[I]n the event that a person awarded compensation dies prior to receiving the full amount of his or her compensation, the person's estate shall be eligible to receive any remaining compensation."); LA. REV. STAT. ANN. § 15:572.8(O)(1-4) (2012) (stating that if compensation is more than one hundred thousand dollars, then the court may fund an annuity contract for compensation payments over a period of time and the contract will provide for survivor benefits); TENN. CODE ANN. § 9-8-108(a)(7)(C) (1999) ("Upon the death of the claimant, any monthly installments left remaining shall be paid to the claimant's surviving spouse and surviving

surviving spouse and minor children; however, if the exoneree dies “without leaving a surviving spouse or surviving minor children, the payments shall cease.”<sup>52</sup>

Missouri and Nebraska specifically state that compensation or compensation claims are not assignable and any obligation still owed the exoneree ceases upon his or her death.<sup>53</sup> Missouri further states that the individual’s estate or heirs may file no claims.<sup>54</sup> Maryland includes a provision stating: “The Board of Public Works may not pay any part of a grant made under this section to any individual other than the pardoned individual;” however, the provision makes no reference to the exoneree’s estate or heirs and only refers ambiguously to payments for services rendered.<sup>55</sup> Nineteen state statutes are silent as to whether the exoneree’s estate, surviving spouse, surviving minor children, or other heirs are eligible to collect compensation due to a claimant.<sup>56</sup>

Further, being wrongfully convicted does not automatically or necessarily make an individual eligible for compensation in most states.<sup>57</sup> Standing alone, the mere fact that the claimant was wrongfully convicted and incarcerated is enough in only one state.<sup>58</sup> New Hampshire is the only state that does not specify any particular eligibility requirements other

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minor children in equal portions.”); TEX. CIV. PRAC. & REM. CODE ANN. § 103.101(c) (West Supp. 2012) (“[A] deceased person would be entitled to compensation . . . if living, including a person who received a posthumous pardon, the person’s heirs, legal representatives, and estate are entitled to lump-sum compensation . . . .”); VA. CODE ANN. § 8.01-195.11(B) (2007) (explaining the claimant’s annuity must contain a beneficiary provision providing for the annuity’s continued disbursement in the event of death).

52. TENN. CODE ANN. § 9-8-108(a)(7)(C) (1999).

53. MO. ANN. STAT. § 650.058(3) (Supp. 2012); NEB. REV. STAT. § 29-4604(5) (2012) NEB. REV. STAT. ANN. §§ 29-4601 to -08 (West, Westlaw through the 102nd Legislature Second Regular Session 2012).

54. MO. ANN. STAT. § 650.058(3) (Supp. 2012).

55. MD. CODE ANN., STATE FIN. & PROC. § 10-501(d)(1) (LexisNexis 2009).

56. CAL. PENAL CODE § 4904 (Deering 2008); CONN. GEN. STAT. ANN. § 54-102uu(d) (West 2009); D.C. CODE § 2-423 (LexisNexis 2012); FLA. STAT. ANN. § 961.05 (West 2012); 705 ILL. COMP. STAT. ANN. 505/8 (LexisNexis Supp. 2012); IOWA CODE § 633A.1(6)–(7) (2011); ME. REV. STAT. ANN. tit. 14, § 8242 (2003); MASS. GEN. LAWS ANN. ch. 258D, § 5 (West, Westlaw through Chapter 141, except for Chapter 139, of the 2012 2nd Annual Session); MONT. CODE ANN. § 53-1-214 (2011); N.H. REV. STAT. ANN. § 541-B:14 (LexisNexis Supp. 2011); N.J. STAT. ANN. § 52:4C-5 (West 2008); N.Y. CT. CL. ACT § 8-b (Consol. 2004); N.C. GEN. STAT. § 148-84 (2011); OHIO REV. CODE ANN. § 2743.48(H) (LexisNexis 2008); OKLA. STAT. ANN. tit. 51, § 154 (West 2008); UTAH CODE ANN. § 78B-9-405 (LexisNexis 2008); VT. STAT. ANN. tit. 13, § 5574 (2009); W. VA. CODE ANN. § 14-2-13a (LexisNexis 2009); WIS. STAT. ANN. § 775.05 (West 2009).

57. See INNOCENCE PROJECT, *supra* note 7, at 17 (explaining that exonerees generally must file a claim stating how the evidence proves their innocence).

58. N.H. REV. STAT. ANN. § 541-B:14(II) (Supp. 2012).

than wrongful conviction and incarceration.<sup>59</sup> New Hampshire's statute simply states that a claimant is eligible "[i]f a claim is filed against the state for time unjustly served in the state prison when a person is found to be innocent . . . ."<sup>60</sup> Protectively, most state statutes specify additional eligibility requirements that must be met and these eligibility requirements can vary greatly between states.<sup>61</sup>

Many states specify classes of crimes from which the claimant must have been exonerated before they are eligible to file a claim.<sup>62</sup> In this

59. *Id.*

60. *Id.*

61. Compare, e.g., CAL. PENAL CODE § 4900 (Deering 2008) (explaining that at a hearing, the claimant must prove that the crime for which he was convicted "was either not committed at all or, if committed, was not committed by him . . ."), with D.C. CODE § 2-422 (LexisNexis 2012) (requiring a showing "upon clear and convincing evidence, he did not commit any of the acts charged or his acts or omissions in connection with such charge constituted no offense . . ."), with FLA. STAT. ANN. § 961.03(1)(a)(1) (West 2012) (explaining that claimant must "[s]tate that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence . . ."), with IOWA CODE ANN. § 663A.1(1)(d) (2011) (must show that the "conviction was vacated or dismissed, or was reversed, and no further proceedings can be or will be held against the individual on any facts and circumstances alleged in the proceedings which had resulted in the conviction."), with LA. REV. STAT. ANN. § 15:572.8(2) (2012) (claimant must prove "by clear and convincing scientific or non-scientific evidence that he is factually innocent of the crime for which he was convicted."), with NEB. REV. STAT. ANN. § 29-4603(2) (West, Westlaw through the 102nd Legislature Second Regular Session 2012) (setting out that claimant must show by "clear and convincing evidence" that he or she was innocent and that "the Board of Pardons has pardoned the claimant, that a court has vacated the conviction of the claimant, or that the conviction was reversed and remanded for a new trial and no subsequent conviction was obtained."), with N.Y. CT. CL. ACT § 8-b(3)(b)(i)–(ii) (Consol. 2004) (asserting that claimant must show he has been "pardoned upon the ground of innocence . . . or his judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he was found not guilty at the new trial or he was not retried and the accusatory instrument dismissed; provided that the judgment of conviction was reversed or vacated, and the accusatory instrument was dismissed . . ."), with OHIO REV. CODE ANN. § 2743.48(A)(4) (LexisNexis 2008) (listing Ohio's eligibility requirements for wrongful conviction compensation, "conviction was vacated or was dismissed, or reversed on appeal, the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought, or will be brought . . . against the individual for any act associated with that conviction."), and WIS. STAT. ANN. § 775.05(3) (West 2009) (explaining the findings a claims board must make, that "the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she suffered imprisonment . . .").

62. See James L. Buchwalter, *Cause of Action or Claim Under State Statute Providing Remedy for Wrongful Conviction and Incarceration*, 25 CAUSES OF ACTION 2d 579 (2004) (outlining some disparities between state wrongful conviction compensation requirements); see also Daniel S. Kahn, *Presumed Guilty Until Proven Innocent: The Burden of Proof in Wrongful Conviction Claims Under State Compensation Statutes*, 44 U. MICH. J.L.

regard, a minority of the statutes require that the claimant was wrongfully imprisoned based on a felony conviction;<sup>63</sup> however, in a few states, a claimant may also be eligible for compensation based on a misdemeanor conviction or for pretrial incarceration.<sup>64</sup> The majority of statutes do not require a conviction based on a certain class of crime and only require the claimant to have been incarcerated for a crime he did not commit, not stating any particular class of crime.<sup>65</sup>

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REFORM 123, 137–38 (2010) (addressing the various qualifying eligibility requirements in state wrongful conviction compensation statutes).

63. CAL. PENAL CODE § 4900 (Deering 2008); MASS. GEN. LAWS ANN. ch. 258D, § 1(A) (West, Westlaw through Chapter 141, except for Chapter 139, of the 2012 2nd Annual Session); MO. ANN. STAT. § 650.058(1)(1) (Supp. 2012); MONT. CODE ANN. § 53-1-214(1) (2011); N.C. GEN. STAT. § 148-82(a) (2011); OHIO REV. CODE ANN. § 2743.48(A)(1) (LexisNexis 2008); OKLA. STAT. ANN. tit. 51, § 154(B)(1) (West 2008); VA. CODE ANN. § 8.01-195(B) (2007).

64. See, e.g., ALA. CODE § 29-2-156(2) (LexisNexis 2003) (stating claimant must have been convicted of a felony or “[h]ave been incarcerated pretrial on a state felony charge, for at least two years . . . .”); IOWA CODE § 663A.1(1)(c) (2011) (noting claimant is eligible if he was “sentenced to incarceration for a term of imprisonment not to exceed two years if the offense was an aggravated misdemeanor or to an indeterminate term of years . . . if the offense was a felony . . . .”); N.Y. Cr. CL. ACT § 8-b(3)(a) (Consol. 2004) (stating any person who was “convicted of one or more felonies or misdemeanors . . . .” is eligible to present a claim for damages); W. VA. CODE § 14-2-13a(b) (LexisNexis 2009) (“Any person arrested or imprisoned or convicted and subsequently imprisoned for one or more felonies or misdemeanors . . . may present a claim for damages against the state.”).

65. CONN. GEN. STAT. ANN. § 54-102uu(a)(1) (West 2009) (noting claimant is eligible if convicted of “one or more crimes, of which the person was innocent, has been sentenced to a term of imprisonment for such crime or crimes and has served all or part of such sentence . . . .”); D.C. CODE § 2-421 (LexisNexis 2012) (noting claimant is eligible if “unjustly convicted of and subsequently imprisoned for a criminal offense . . . .”); 705 ILL. COMP. STAT. ANN. 505/8(c) (LexisNexis Supp. 2012) (illustrating that unfairly serving time in prison is the key element in eligibility for damages claim); LA. REV. STAT. ANN. § 15:572.8(A)(1) (2012) (stating that a claimant is eligible for compensation as long as his conviction “has been reversed or vacated . . . and has proven . . . that he is factually innocent of the crime . . . .”); ME. REV. STAT. ANN. tit. 14, § 8241(2)(A) (2003) (noting claimant is eligible if he or she “was convicted of a criminal offense . . . .”); MD. CODE ANN., STATE FIN. & PROC. § 10-501(a)(1) (LexisNexis 2009) (eligible if claimant was “erroneously convicted, sentenced, and confined . . . for a crime the individual did not commit . . . .”); N.H. REV. STAT. ANN. § 541-B:14(II) (LexisNexis Supp. 2011) (delineating that an individual may file a claim for “time unjustly served . . . where a person is found to be innocent . . . .”); N.J. STAT. ANN. § 52:4C-1 (West 2008) (showing that a claimant is eligible if he can demonstrate an unjust conviction); TENN. CODE ANN. § 9-8-108(a)(7) (1999) (explaining eligibility if the individual was “wrongfully imprisoned and granted an exoneration . . . .”); TEX. CIV. PRAC. & REM. CODE ANN. § 103.001(a)(2)(A)–(B) (West Supp. 2012) (explaining that requirements for recovery include that a person be granted a full pardon or can prove actual innocence); WIS. STAT. ANN. § 775.05(1) (West 2009) (describing eligible claimants as “innocent persons who have been convicted of a crime . . . .”).

In place of the “class of crime” requirement, many states have set other, more stringent, eligibility requirements. For example, Missouri, Montana, Utah, and Vermont only allow those who can prove they were determined to be actually innocent through DNA testing to make a claim for state compensation.<sup>66</sup> Maryland, Maine, and North Carolina provide for compensation only in cases where the Governor has granted a pardon.<sup>67</sup> On the other hand, Illinois affords more opportunity by expanding claims to those individuals who have obtained a certificate of innocence from the circuit court.<sup>68</sup> Likewise, West Virginia extends the chance to bring claims for compensation to those who have received a pardon, as well as those persons with a reversed or vacated judgment of conviction.<sup>69</sup> Furthermore, West Virginia extends this chance to situations where a new trial was ordered or the statute upon which the conviction was based, violated the U.S. Constitution or Constitution of West Virginia.<sup>70</sup>

Several states prohibit those who plead guilty from collecting compensation; this is true even if actual innocence has since been proven.<sup>71</sup> However, the District of Columbia creates an exception for those who made an Alford Plea.<sup>72</sup> While Virginia’s general rule excludes those who have entered a final plea of guilty, there is an exception for those persons who entered a guilty plea, but were sentenced to death or obtained convictions for a Class 1 or Class 2 felony, or any felony where the punishment is life in prison.<sup>73</sup> Finally, there are nine states where a claimant is not eligible to collect compensation if that state determines that the claimant’s own conduct or action helped bring about his conviction.<sup>74</sup>

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66. MO. ANN. STAT. § 650.058(1) (Supp. 2012); MONT. CODE ANN. § 53-1-214(1) (2011); UTAH CODE ANN. § 78B-9-405(1) (LexisNexis 2008); VT. STAT. ANN. tit. 13, § 5574(a)(3) (2009).

67. ME. REV. STAT. ANN. tit.14, § 8241(2)(C) (2003); MD. CODE ANN., STATE FIN. & PROC. § 10-501(b) (LexisNexis 2009); N.C. GEN. STAT. § 148-82(a) (2011).

68. 705 ILL. COMP. STAT. ANN. 505/8(c) (LexisNexis Supp. 2012).

69. W. VA. CODE ANN. § 14-2-13(d) (LexisNexis 2009).

70. *Id.*

71. IOWA CODE § 663A.1(1)(b) (2011); OHIO REV. CODE ANN. § 2743.48(A)(2) (LexisNexis 2008); OKLA. STAT. ANN. tit.51, § 154(B)(2)(b) (2008).

72. D.C. CODE § 2-425 (LexisNexis 2012). *See generally* North Carolina v. Alford, 400 U.S. 25 (1970) (describing the Supreme Court’s holding about Henry Alford, a man accused of first-degree murder, who was permitted to plead guilty while continuing to assert his innocence).

73. VA. CODE ANN. § 8.01-195.10(B)(ii) (2007).

74. *See* ALA. CODE § 29-2-156(2) (LexisNexis 2003) (obligating an individual who is making a claim for compensation for pretrial incarceration to prove that he or she was incarcerated “at least two years through no fault of his or her own . . .”); *see also* CAL. PENAL CODE § 4903 (Deering 2012) (asserting that the claimant must prove “the fact that he or she did not, by any act or omission on his or her part, intentionally contribute to the

## B. *Where to File*

Many state statutes specify where a claim must be filed, and can vary significantly. As to the procedure for filing, some statutes' provisions are quite complex and can be difficult to interpret and follow. For example, in Alabama, the legislature specifically created the Committee on Compensation for Wrongful Incarceration (Committee) to hear compensation claims.<sup>75</sup> The Committee is composed of nine members, at least four of which are required to be present to make any decision regarding certification of a compensation award.<sup>76</sup>

In Alabama, filing begins with an application to the Division of Risk Management, which then notifies the Committee.<sup>77</sup> The state's Division of Risk Management is required to make a record, file a history of the case, and certify any awards made by the Committee.<sup>78</sup> The Division of Risk Management is also tasked with providing any necessary administrative and legal support to the Committee on Compensation.<sup>79</sup> If the claimant's eligibility is verified by the Division of Risk Management in the Department of Finance, the Committee shall then certify an amount of compensation based on the statute.<sup>80</sup> The Committee's recommendation can then be presented to the state legislature for its approval in the form of a bill.<sup>81</sup> If the bill is approved, it is then left up to the State Comptroller to pay the amount of the award.<sup>82</sup> There is also a provision that contends that compensation is not necessarily an entitlement and therefore an award's disbursement will depend on the legislature appropriating funds for that purpose,<sup>83</sup> but it is not clear who is responsible for presenting the proposal for the appropriation of funds to the legislature.

California, Texas, Virginia, and Wisconsin have similarly complex filing and procedural requirements.<sup>84</sup> The complexity of such provisions can

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bringing about of his or her arrest or conviction . . ."); D.C. CODE § 2-422(2) (LexisNexis 2012); NEB. REV. STAT. ANN. § 29-4603(4) (West, Westlaw through the 102nd Legislature Second Regular Session 2012); N.J. STAT. ANN. § 52:4C-3(c) (West 2008); N.Y. CT. CL. ACT § 8-b(5)(d) (Consol. 2004); VT. STAT. ANN. tit.13, § 5574 (a)(4) (2009); VA. CODE ANN. § 8.01-195.10(B) (2007); W. VA. CODE ANN. § 14-2-13a(e)(3) (LexisNexis 2009).

75. ALA. CODE § 29-2-151 (LexisNexis 2003).

76. *Id.* § 29-2-152(a), (c).

77. *Id.* § 29-2-158(a).

78. *Id.* § 29-2-152(e).

79. *Id.*

80. *Id.* § 29-2-158(b).

81. *Id.* § 29-2-159(b).

82. *Id.*

83. *Id.* § 29-2-165.

84. See also Muhammad U. Faridi et al., *Undoing Time: A Proposal for Compensation for Wrongful Imprisonment of Innocent Individuals*, 34 W. NEW ENG. L. REV. 1, 24–25 (2012) (discussing the shortfalls of the filing system for compensation for wrongful impris-

make it difficult for an exoneree to understand and file an appropriate application in the correct location without the assistance of an attorney. Confusion due to the complexity of many of these provisions is likely to lead to an exoneree missing a deadline for application or filing improperly and could result in the exoneree being procedurally barred from bringing their claim.

On the other hand, a number of states operate with more clarity as to the proper means of filing in either state courts or to a claims board. Illinois and Ohio simply involve filing in the court of claims.<sup>85</sup> In Connecticut, claims are to be submitted to the Claims Commissioner.<sup>86</sup> Iowa and Louisiana only require a filing in the district court.<sup>87</sup> In Maine and New Jersey claims must be made in the Superior Court.<sup>88</sup> Maryland requires filing with the Board of Public Works,<sup>89</sup> and Tennessee requires filing with the board of claims.<sup>90</sup> Missouri simply requires filing in the sentencing court.<sup>91</sup> Montana requires filing with the department of corrections.<sup>92</sup> Vermont requires filing with the Washington County superior court.<sup>93</sup> Additionally, the District of Columbia and the New Hampshire statutes are silent as to where to file.<sup>94</sup> West Virginia is also vague in merely requiring filing with the court.<sup>95</sup> Determining where an exoneree should file is cumbersome; the only consistency is that, when specified at

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onment). *See generally* CAL. PENAL CODE §§ 4900–04 (Deering 2008) (listing a set of complex requirements that must be met in order to satisfy a claim); TEX. CIV. PRAC. & REM. CODE ANN. §103.051 (West Supp. 2012); VA. CODE ANN. §§ 8.01-195.11 (2007) (explaining the administrative process of allocating recovery once an individual is found to be eligible for compensation); WIS. STAT. ANN. § 775.05 (West 2009) (requiring filing to occur in similar non-judicial boards or departments with their own regulations).

85. *See* OHIO REV. CODE ANN. § 2743.48(D) (LexisNexis 2008); *see* 705 ILL. COMP. STAT. ANN. 505/8(a) (LexisNexis Supp. 2012) (stating that the court of claims has jurisdiction in “[a]ll claims against the State founded upon any law of the State of Illinois or upon any regulation adopted thereunder by an executive or administrative officer or agency . . .”).

86. CONN. GEN. STAT. ANN. § 54-102uu(2)(b) (West 2009).

87. LA. REV. STAT. ANN. § 15:572.8(C) (2012) (“[S]hall be filed in the district court in which the original conviction was obtained . . .”); IOWA CODE § 663A.1–.3 (2011).

88. *See* N.J. STAT. ANN. § 52:4C-2 (West 2008); *see* ME. REV. STAT. ANN. tit.14, § 8243 (2003) (stating that the Superior Court has original jurisdiction over these claims).

89. *See* MD. CODE ANN., STATE FIN. & PROC. § 10-501(a)(1) (LexisNexis 2009) (explaining that the Board of Public Works is the authoritative body in administering damages to the wrongfully convicted).

90. TENN. CODE ANN. § 9-8-108(a)(1) (1999).

91. MO. ANN. STAT. § 650.058(1) (Supp. 2012).

92. MONT. CODE ANN. § 53-1-214(1) (2011).

93. VT. STAT. ANN. tit.13, § 5572(b) (2009).

94. D.C. CODE §§ 2-421 to -25 (LexisNexis 2012); N.H. REV. STAT. ANN. § 541-B:14 (LexisNexis Supp. 2011); N.Y. CT. CL. ACT § 8-b(1) (Consol. 2004).

95. W. VA. CODE ANN. § 14-2-13a(h)–(i) (LexisNexis 2009).



all, the proper place for filing is likely to vary widely from one state to the next.

### C. *Time Limits on Filing*

In fifteen states, exonerees must file a claim for compensation within a specified time period after their exoneration.<sup>96</sup> Of those, one state has enacted a one-year limitation period,<sup>97</sup> eleven states have enacted a two-year limitation period,<sup>98</sup> and three states have enacted a three-year limitation period.<sup>99</sup>

Seven other states have enacted statutory provisions that do not specify a particular limitation period for filing a compensation claim<sup>100</sup> Only six

96. ALA. CODE § 29-2-162 (LexisNexis 2003); CAL. PENAL CODE § 4901 (Deering 2008); CONN. GEN. STAT. ANN. § 54-102uu(f) (West 2009); IOWA CODE § 663A.1(8) (2011); LA. REV. STAT. ANN. § 15:572.8(I) (2012); ME. REV. STAT. ANN. tit. 14, § 8244 (2003); MASS. GEN. LAWS ANN. ch. 258D, § 8 (West, Westlaw through Chapter 141, except for Chapter 139, of the 2012 2nd Annual Session); N.H. REV. STAT. ANN. § 541-B:14(IY) (LexisNexis Supp. 2011); N.J. STAT. ANN. § 52:4C-4 (West 2008); N.Y. CT. CL. ACT § 8-b(7) (Consol. 2004); OHIO REV. CODE ANN. § 2743.48(H) (LexisNexis 2008); TENN. CODE ANN. § 9-8-108(a)(7)(F) (1999); TEX. CIV. PRAC. & REM. CODE ANN. § 103.003 (West Supp. 2012); VT. STAT. ANN. tit. 13, § 5576(a) (2009); W. VA. CODE ANN. § 14-2-13a(h) (LexisNexis 2009).

97. TENN. CODE ANN. § 9-8-108(a)(7)(F) (1999).

98. ALA. CODE § 29-2-162 (LexisNexis 2003); CAL. PENAL CODE § 4901 (Deering 2008); CONN. GEN. STAT. ANN. § 54-102uu(f) (West 2009); IOWA CODE § 663A.1(8) (2011); LA. REV. STAT. ANN. § 15:572.8(I) (2012); ME. REV. STAT. ANN. tit. 14, § 8244 (2003); MASS. GEN. LAWS ANN. ch. 258D, § 8 (West, Westlaw through Chapter 141, except for Chapter 139, of the 2012 2nd Annual Session); N.J. STAT. ANN. § 52:4C-4 (West 2008); N.Y. CT. CL. ACT § 8-b(7) (Consol. 2004); OHIO REV. CODE ANN. § 2743.48(H) (LexisNexis 2008); W. VA. CODE ANN. § 14-2-13a(h) (LexisNexis 2009).

99. N.H. REV. STAT. ANN. § 541-B:14(IY) (LexisNexis Supp. 2011); TEX. CIV. PRAC. & REM. CODE ANN. § 103.003 (West Supp. 2012); VT. STAT. ANN. tit. 13, § 5576(a) (2009).

100. See 705 ILL. COMP. STAT. ANN. 505/8(c) (LexisNexis Supp. 2012) (mandating that an individual bringing a compensation claim must have received a pardon or been issued a certificate of innocence from the circuit court); MASS. GEN. LAWS ANN. ch. 258D, § 1 (West, Westlaw through Chapter 141, except for Chapter 139, of the 2012 2nd Annual Session) (asserting that during the time the action is being filed, the district attorney or attorney general must not bring any criminal proceedings associated with the felony conviction at issue); MO. ANN. STAT. § 650.058 (Supp. 2012) (specifying that the petition must be filed with the sentencing court). See also MONT. CODE ANN. § 53-1-214(4) (2011) (allowing the privilege of receiving aid to be active for ten years subsequent to an individual's release); NEB. REV. STAT. ANN. §§ 29-4601 to -08 (West, Westlaw through the 102nd Legislature Second Regular Session 2012) (laying out specific requirements that must be met by clear and convincing evidence); UTAH CODE ANN. § 78B-9-405 (LexisNexis 2008) (affording exonerees an amount equal to the "average annual nonagricultural payroll wage in Utah, as determined by the data most recently published by the Department of Workforce Services at the time of the petitioner's release from prison," for a maximum period of fifteen years); VA. CODE ANN. §§ 8.01-195.10-12 (2007) (providing for direction of guidelines for bringing compensation claims).

states specifically address a claimant's ability to file if the exoneration occurred before the effective date of the statute.<sup>101</sup> In such cases, filing is required within a certain amount of time from the effective date of the statute.<sup>102</sup> Only the District of Columbia expressly prohibits compensation in cases where the individual was exonerated prior to the effective date of the statute.<sup>103</sup> Six states that allow for a claim make no express distinction between those exonerated before or after the effective date.<sup>104</sup>

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101. See ALA. CODE § 29-2-162 (LexisNexis 2003) (requiring claimants to file within two years from the effective date of the act); CONN. GEN. STAT. ANN. § 54-102uu(f) (West 2009) (stating claimant's must within two years from the effective date of the statute); LA. REV. STAT. ANN. § 15:1572.8(J) (2012) (emphasizing that those exonerated prior to the effective date of the statute must file a petition within three years from the effective date of the statute, "or be forever barred from filing" an application."); N.J. STAT. ANN. § 52:4C-4 (West 2008) (declaring that those released or pardoned "during the five year period prior to May 2, 1996 shall have two years from the effective date of this act to file suit."); N.Y. CT. CL. ACT. § 8-b(7) (Consol. 2004) (allowing claimants to file within two years of the effective date of the statute); W. VA. CODE ANN. § 14-2-13a(h-i) (LexisNexis 2009) (requesting claimants to file within two years of the effective date of the statute, or if claiming compensation).

102. See ALA. CODE § 29-2-162 (LexisNexis 2003) (requiring claimants to file within two years from the effective date of the act); CONN. GEN. STAT. ANN. § 54-102uu(f) (West 2009) (stating claimants must file within two years from the effective date of the statute); LA. REV. STAT. ANN. § 15:1572.8(J) (2012) (emphasizing that those exonerated prior to the effective date of the statute must file a petition within three years from the effective date of the statute, "or be forever barred from filing an application."); N.J. STAT. ANN. § 52:4C-4 (West 2008) (declaring that those released or pardoned "during the five year period prior to May 2, 1996 shall have two years from the effective date of this act to file suit."); N.Y. CT. CL. ACT. § 8-b(7) (Consol. 2004) (allowing claimants to file within two years of the effective date of the statute); W. VA. CODE ANN. § 14-2-13a(h-i) (LexisNexis 2009) (requesting claimants to file within two years of the effective date of the statute, or if claiming compensation:

based on the dismissal of a felony charge or charges against him when another person is subsequently charged, arrested and convicted of the same felony charge or charges based upon a dismissal of the felony charge or charges that occurred before the effective date of this section shall file his claim within one year after the effective date of this section.).

*Id.*

103. See D.C. CODE § 2-424 (LexisNexis 2012) (refusing to extend "to any cause of action for unjust imprisonment arising prior to the effective date of this subchapter.").

104. See FLA. STAT. ANN. § 961.05 (West 2012) (asserting that an exoneree must bring their claim for compensation no more than more two years after the sentencing court determines them to be a wrongfully incarcerated person); ME. REV. STAT. ANN. tit. 14, § 8244 (2003) (mandating that a claim must be brought within two years of pardon or else the individual will be barred); MD. CODE ANN., STATE FIN. & PROC. § 10-501 (LexisNexis 2009) (allowing an individual to bring a claim subsequent to a pardon finding that the conviction was conclusively an error); N.H. REV. STAT. ANN. § 541-B:14(IY) (LexisNexis Supp. 2011) (allowing three years to bring a civil action under this statute); N.C. GEN. STAT. § 148-82 (2011) (permitting five years from the date of dismissal for an individual to bring a claim); VT. STAT. ANN. tit. 13, § 5576 (2009) (allowing a claim to be commenced

### III. WHAT IS COMPENSATED?

#### A. *Appointment of Counsel and Fees*

The majority of states do not provide for attorney's fees or for appointment of counsel to assist a claimant seeking compensation.<sup>105</sup> However, several states do provide reimbursement for reasonable attorney's fees in connection with seeking compensation under the state's compensation statute.<sup>106</sup> In addition to "reasonable" attorney fees to assist in seeking compensation, Ohio also provides for the reimbursement of any fines or

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within three years of a reversal from the conviction, acquittal in a subsequent trial, or pardon).

105. See ALA. CODE § 29-2-159 (LexisNexis 2003) (stating that the responsible committee must award an amount "equal to fifty thousand dollars" for each year the individual was incarcerated or a on a pro-rata basis for the portion of each year the individual was incarcerated); CAL. PENAL CODE § 4904 (Deering 2008) (awarding claimants \$100 per day after conviction, and the statute explicitly states this will not be considered gross income for tax purposes); D.C. CODE § 2-423 (LexisNexis 2012) (denying claims for punitive damages); LA. REV. STAT. ANN. § 15:572.8 (2012) (capping claim amounts at \$250,000); MASS. GEN. LAWS ANN. ch. 258D, § 5 (West, Westlaw through Chapter 141, except for Chapter 139, of the 2012 2nd Annual Session) (allowing the following factors to be taken into consideration: "the income the claimant would have earned, but for his incarceration; the particular circumstances of the claimant's trial and other proceedings; the length and conditions under which the claimant was incarcerated and; any other factors deemed appropriate under the circumstances in order to fairly and reasonably compensate the claimant."); MO. ANN. STAT. § 650.058 (Supp. 2012) (stating that the maximum award will be no more than \$300,000 for any single conviction and allowing \$50 a day for each day the individual was incarcerated subsequent to his conviction); MONT. CODE ANN. § 53-1-214 (2011) (stating that those wrongfully convicted can receive educational aid); N.H. REV. STAT. ANN. § 541-B:14 (LexisNexis Supp. 2011) (placing limitations on claims that can be brought against the state for wrongful imprisonment); N.Y. CT. CL. ACT § 8-b (Consol. 2004) (explaining and limiting claims that can be brought against the state for wrongful imprisonment); N.C. GEN. STAT. § 148-84 (2011) (providing guidelines for filing a claim of wrongful conviction and limiting the amount of compensation); OKLA. STAT. ANN. tit., 51, § 154(A)(4) (West 2008) (defining the extent of liability that can be placed on the state in a wrongful imprisonment claim); TENN. CODE ANN. § 9-8-108 (1999) (describing the powers given to a board of claims to hear cases arising from wrongful imprisonment); TEX. CIV. PRAC. & REM. CODE ANN. § 103.101 (West Supp. 2012) (discussing fees that can be charged by attorneys in false imprisonment claims); UTAH CODE ANN. § 78B-9-405 (LexisNexis 2008) (setting forth payments that can be made and limitations applicable to wrongful imprisonment claims); W. VA. CODE ANN. § 14-2-13a(h) (LexisNexis 2009) (explaining claims that can be brought against the state for wrongful imprisonment and the procedures to bring those claims).

106. 705 ILL. COMP. STAT. ANN. 505/8(c) (LexisNexis Supp. 2012) ("[S]hall fix attorney's fees not to exceed 25 [percent] of the award granted."); IOWA CODE § 663A.1(6)(d) (2011) (providing for "reasonable" attorney fees); N.J. STAT. ANN. § 52:4C-5(b) (West 2008); VT. STAT. ANN. tit. 13, § 5574(b)(4) (2009) (allowing for the recovery of reasonable attorney's fees); WIS. STAT. ANN. § 775.05(4) (West 2009) ("[T]he petitioner is entitled [to] attorney fees, costs and disbursements.").

court costs and expenses associated with the claimant's criminal proceedings and appeals, "and, if applicable, in connection with obtaining the wrongfully imprisoned individual's discharge from confinement . . . ." <sup>107</sup>

Florida and Nebraska will only compensate for attorney's fees and expenses paid by the claimant in connection with the criminal proceedings and appeals resulting from the wrongful conviction but make no mention of reimbursement for attorney's fees in connection with seeking compensation. <sup>108</sup> Finally, Maryland specifically prohibits a claimant from paying any part of the compensation award "to another person for services rendered in connection with the collection" of claimant's compensation award, but states that this should not prohibit the claimant from contracting services to prove his innocence, pardon, or release from imprisonment. <sup>109</sup>

### B. Offsets

The majority of state statutes do not discuss offsets. <sup>110</sup> For the greater part, the state statutes that do discuss offsets specifically prohibit payments for expenses acquired by the state or other political units of the state in connection with the arrest, prosecution, or imprisonment of the claimant. <sup>111</sup> This includes any offsets for the feeding, clothing, shelter, and medical care of the claimant. <sup>112</sup> Moreover, Massachusetts prohibits

107. OHIO REV. CODE ANN. § 2743.48(E)(2)(a)-(F)(2) (LexisNexis 2008).

108. FLA. STAT. ANN. § 961.06(1)(d) (West 2012); NEB. REV. STAT. ANN. §§ 29-4605 (West, Westlaw through the 102nd Legislature Second Regular Session 2012) ("If the court finds that any property of the claimant was subjected to a lien to recover costs of defense services rendered by the state to defend the claimant . . . the court shall extinguish the lien.).

109. MD. CODE ANN., STATE FIN. & PROC. § 10-501(d)(2)(i) (LexisNexis 2009).

110. CAL. PENAL CODE § 4904 (Deering 2008); CONN. GEN. STAT. ANN. § 54-102uu(e) (West 2009); D.C. CODE ANN. § 2-423 (LexisNexis 2012); FLA. STAT. ANN. § 961.06 (West 2012); ME. REV. STAT. ANN. tit. 14, § 8242 (2003); MD. CODE ANN., STATE FIN. & PROC. § 10-501 (LexisNexis 2009); MONT. CODE ANN. § 53-1-214 (2011); N.H. REV. STAT. ANN. § 541-B:14 (LexisNexis Supp. 2011); N.J. STAT. ANN. § 52:4C-5 (West 2008); N.Y. CT. CL. ACT § 8-b (Consol. 2004); N.C. GEN. STAT. § 148-84 (2011); OKLA. STAT. tit. 51, § 154 (2008); TENN. CODE ANN. § 9-8-108 (1999); VA. CODE ANN. § 8.01-195.11 (2007); W. VA. CODE § 14-2-13a (LexisNexis 2009); WIS. STAT. ANN. § 775.05 (West 2009).

111. ALA. CODE § 29-2-160(d) (LexisNexis 2003); IOWA CODE § 663A.1(7) (2011); MASS. GEN. LAWS ANN. ch. 258D, § 5(B) (West, Westlaw through Chapter 141, except for Chapter 139, of the 2012 2nd Annual Session); NEB. REV. STAT. ANN. § 29-4604(2)(a-b) (West, Westlaw through the 102nd Legislature Second Regular Session 2012); UTAH CODE ANN. § 78B-9-405(5)(b) (LexisNexis 2008); VT. STAT. ANN. tit. 13, § 5574(c)(2) (2009).

112. ALA. CODE § 29-2-160(d) (LexisNexis 2003); IOWA CODE § 663A.1(7) (2011); MASS. GEN. LAWS ANN. ch. 258D, § 5(B) (West, Westlaw through Chapter 141, except for Chapter 139, of the 2012 2nd Annual Session); NEB. REV. STAT. ANN. § 29-4604(2)(a-b) (West, Westlaw through the 102nd Legislature Second Regular Session 2012); UTAH CODE ANN. § 78B-9-405(5)(b) (LexisNexis 2008); VT. STAT. ANN. tit. 13, § 5574(c)(2) (2009).

an offset or reduction of the compensation award for “tuition or fees for educational services or the value of services to be provided to the claimant that may be awarded . . . .”<sup>113</sup> Missouri vaguely prohibits the “costs of care” from being deducted from any compensation award and mentions no other offset prohibitions.<sup>114</sup>

### C. Tax Exemptions

Surprisingly, only California, Massachusetts, Vermont, and Utah expressly discuss state tax exemptions for compensation awards—all other state statutes are silent on the matter.<sup>115</sup> California prohibits an award from being “treated as gross income to the recipient under the Revenue and Taxation Code.”<sup>116</sup> In Massachusetts, “[o]nly those portions of a judgment that are paid or retained as compensation for services in bringing a claim . . . by an attorney representing the claimant . . . shall be subject to taxation by the commonwealth.”<sup>117</sup> In Vermont, the claimant’s award “shall not be subject to any state taxes, except for the portion of the judgment awarded as attorney’s fees . . . .”<sup>118</sup>

### D. How Much Compensation and in What Form?

Statutes vary significantly as to the cash amount awarded to claimants—from \$80,000 for each year imprisoned in Texas,<sup>119</sup> to a maximum amount of \$20,000 in New Hampshire regardless of the number of years spent in prison,<sup>120</sup> to no compensation at all in Montana.<sup>121</sup> In New Jersey, the claimant is awarded the greater of “twice the amount of the claimant’s income in the year prior to his incarceration or \$20,000.00 for each year of incarceration,” and the award cannot exceed this amount.<sup>122</sup>

Wisconsin provides a mere \$5,000 per year of incarceration, not to exceed \$25,000 total.<sup>123</sup> Maryland limits compensation to “actual dam-

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113. MASS. GEN. LAWS ANN. ch. 258D, § 5(B) (West, Westlaw through Chapter 141, except for Chapter 139, of the 2012 2nd Annual Session).

114. MO. ANN. STAT. § 650.058(4) (Supp. 2012).

115. See CAL. PENAL CODE § 4904 (Deering 2008); MASS. GEN. LAWS ANN. ch. 258D, § 5(C) (West, Westlaw through Chapter 141, except for Chapter 139, of the 2012 2nd Annual Session); UTAH CODE ANN. § 78B-9-405(5)(a) (LexisNexis 2008); VT. STAT. ANN. tit. 13, § 5574(c)(1) (2009) (using individual statute language).

116. CAL. PENAL CODE § 4904 (Deering 2008).

117. MASS. GEN. LAWS ANN. ch. 258D, § 5(C) (West, Westlaw through Chapter 141, except for Chapter 139, of the 2012 2nd Annual Session).

118. VT. STAT. ANN. tit. 13, § 5574(c)(1) (2009).

119. TEX. CIV. PRAC. & REM. CODE ANN. § 103.052(a)(1) (West Supp. 2012).

120. N.H. REV. STAT. ANN. § 541-B:14(II) (LexisNexis Supp. 2011).

121. MONT. CODE ANN. § 53-1-214 (2011) (providing for educational aid only).

122. N.J. STAT. ANN. § 52:4C-5 (West 2008).

123. WIS. STAT. ANN. § 775.05 (4) (West 2009).

ages”<sup>124</sup> with no definition of “actual damages” anywhere in the statute.<sup>125</sup> Nebraska imprecisely provides compensation for “damages found to proximately result from the wrongful conviction and that have been proved based upon a preponderance of the evidence.”<sup>126</sup> Illinois stands alone in providing compensation using a graduated scale based on how long the claimant was imprisoned: “for imprisonment of 5 years or less, not more than \$85,350; for imprisonment of 14 years or less but over 5 years, not more than \$170,000; for imprisonment of over 14 years, not more than \$199,150.”<sup>127</sup> California, Iowa, and Missouri calculate compensation on a daily basis with California providing \$100.00 per day, and Iowa and Missouri providing \$50.00 for each day the claimant is wrongfully imprisoned.<sup>128</sup> Alternatively, Ohio provides \$40,330 for each year of incarceration.<sup>129</sup> Virginia provides compensation in an “amount equal to 90 percent of the Virginia per capita personal income as reported by the Bureau of Economic Analysis of the United States Department of Commerce for each year of incarceration, or portion thereof.”<sup>130</sup> Similarly, Utah allows a claimant to receive “up to a maximum of 15 years, the monetary equivalent of the average annual nonagricultural payroll wage in Utah.”<sup>131</sup> Alabama, Florida, and North Carolina, however, allow \$50,000 for each year of wrongful incarceration.<sup>132</sup>

Most states provide little guidance as to the amount of compensation or as to how to calculate the amount the state may award a claimant. Maine is silent except to say that the amount “may not exceed \$300,000 for all claims arising as a result of a single conviction.”<sup>133</sup> Similarly, Oklahoma and Tennessee are silent, except Oklahoma sets a cap of

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124. MD. CODE ANN., STATE FIN. & PROC. § 10-501(a)(1) (LexisNexis 2009).

125. NEB. REV. STAT. ANN. § 29-4604(1) (West, Westlaw through the 102nd Legislature Second Regular Session 2012).

126. *Id.*

127. 705 ILL. COMP. STAT. ANN. 505/8(c) (LexisNexis Supp. 2012).

128. CAL. PENAL CODE § 4904 (Deering 2008); IOWA CODE § 663A.1(6)(b) (2011); MO. ANN. STAT. § 650.058(1)–(4) (Supp. 2012). However, no individual shall receive more than \$36,500 per year. *Id.*

129. OHIO REV. CODE ANN. § 2743.48(E)(2)(b) (LexisNexis 2008).

130. VA. CODE ANN. § 8.01-195.11(A) (2007).

131. UTAH CODE ANN. § 78B-9-405(1)(a) (LexisNexis 2008). The monetary equivalent is “determined by the data most recently published by the Department of Workforce Services at the time of the petitioner’s release from prison.” *Id.*

132. *See* ALA. CODE § 29-2-159(a) (LexisNexis 2003) (discussing that the state provides the pro rata amount for the portion of each year of incarceration); FLA. STAT. ANN. § 961.06(1)(a), (1)(e) (West 2012) (explaining that total compensation is not to exceed \$2 million); N.C. GEN. STAT. § 148-84(a) (2011) (asserting that compensation is not to exceed \$750,000).

133. ME. REV. STAT. ANN. tit. 14, § 8242(1) (2003).

\$175,000<sup>134</sup> and Tennessee sets a cap of \$1,000,000 to any amount awarded.<sup>135</sup> Connecticut mentions no specific amount or limit on the compensation amount and leaves it to the Claims Commissioner to consider relevant factors and determine an amount.<sup>136</sup> Similarly, the District of Columbia, Massachusetts, New York, Vermont, and West Virginia leave the decision of the amount to the presiding judge or fact finder.<sup>137</sup> Uniquely, Texas provides an exoneree who “was released on parole or required to register as a sex offender . . . compensation in an amount equal to \$25,000 multiplied by the number of years served either on parole or as a registered sex offender.”<sup>138</sup>

Finally, many states provide forms of aid other than, or in addition to, monetary awards to help exonerees reintegrate smoothly back into the community. These forms of aid often include employment training, tuition assistance, health insurance coverage for medical and counseling services, back child support payments, or some other form of aid.<sup>139</sup>

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134. OKLA. STAT. ANN. tit. 51, § 154(4) (West 2008).

135. TENN. CODE ANN. § 9-8-108(a)(7)(A) (1999).

136. See CONN. GEN. STAT. ANN. § 54-102uu(d) (West 2009) (considering these factors which include but are not limited to, the evidence the claimant presents “as to the damages suffered by such person and whether any negligence or misconduct by any officer, agent, employee or official of the state or any political subdivision of the state contributed to such person’s arrest, prosecution, conviction or incarceration.”).

137. See D.C. CODE § 2-423 (LexisNexis 2012) (explaining that a judge awards damages); MASS. GEN. LAWS ANN. ch. 258D, § 5(A) (West, Westlaw through Chapter 141, except for Chapter 139, of the 2012 2nd Annual Session) (stating that the amount is determined by “the court or the jury” and not to exceed \$500,000); N.Y. CT. CL. ACT § 8-b(6) (Consol. 2004) (articulating that judges will award a fair amount in damages); VT. STAT. ANN. tit. 13, § 5574(b) (2009) (noting that “the amount of damages shall not be less than \$30,000.00 nor greater than \$60,000.00 for each year the claimant was incarcerated . . .”); W. VA. CODE ANN. § 14-2-13a(g) (LexisNexis 2009) (asserting that a judge will determine damages that are reasonably necessary).

138. See TEX. CIV. PRAC. & REM. CODE ANN. § 103.052(b) (West Supp. 2012) (expressing years “as a fraction to reflect partial years”).

139. See CONN. GEN. STAT. ANN. § 54-102uu(e) (West 2009) (stating “in addition to the compensation paid . . . the Claims Commissioner may order payment for the expenses of employment training and counseling, tuition and fees at any constituent unit of the state system of higher education, and any other services such person may need . . .”); FLA. STAT. ANN. § 961.06(1)(b)–(d) (West 2012) (giving state tuition, reimbursement for fines, penalties, or court costs, and reasonable attorney fees and expenses); IOWA CODE § 663A.1(6)(c) (2011) (providing for “any lost wages, salary, or other earned income which directly resulted from the individual’s conviction and imprisonment, up to twenty-five thousand dollars per year.”); LA. REV. STAT. ANN. § 15:572.8(2)(a)–(c)(i–ii) (2012) (contributing “costs of job-skills training for three years,” “necessary medical and counseling services for six years,” tuition expenses at any state of Louisiana community college or public university, and tuition for “completion of secondary education” or an “adult education program,” with total costs not to exceed \$80,000); MD. CODE ANN., STATE FIN. & PROC. § 10-501(a)(1) (LexisNexis 2009) (paying a “reasonable amount for any financial or

Texas also includes reentry and reintegration services and other programs for those wrongfully convicted within a separate inmate welfare and reentry statute.<sup>140</sup> The Texas statute dictates that “the department shall develop a comprehensive plan to ensure the successful reentry and reintegration of wrongfully imprisoned persons . . . and [the plan] must include: life-skills, job, and vocational training . . . .”<sup>141</sup> The statute also requires that “the department provide, before a wrongfully imprisoned person is discharged from the department, the person with any documents that are necessary after discharge, including a state identification card . . . .”<sup>142</sup>

#### IV. OTHER AVAILABLE CLAIMS

##### A. *Subrogation*

Tennessee is the only state that adds a subrogation provision to its compensation statute.<sup>143</sup> Tennessee provides that the state “shall have the right of subrogation . . . against any person who willfully and intentionally committed an act or engaged in conduct that directly resulted in or contributed to the wrongful conviction and imprisonment of the claimant . . . .”<sup>144</sup> No statute provides for subrogation against a claimant who collects in a separate civil suit against a party other than the state for the

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other appropriate counseling for the individual, due to the confinement.”); MASS. GEN. LAWS ANN. ch. 258D, § 5(A) (West, Westlaw through Chapter 141, except for Chapter 139, of the 2012 2nd Annual Session) (providing for tuition benefits and compensation for services necessary “to address any deficiencies in the individual’s physical and emotional condition that [is] shown to be directly related to the individual’s erroneous felony conviction and resulting incarceration . . . .”); MONT. CODE ANN. § 53-1-214(1) (2011) (stating that while no monetary compensation is provided, the statute does allow for educational aid); NEB. REV. STAT. ANN. § 29-4606 (West, Westlaw through the 102nd Legislature Second Regular Session 2012) (bestowing services; however, the statute does not list the services allowed and states that “the value of services provided shall be treated as an advance against any award or judgment under the act.”); N.C. GEN. STAT. § 148-84(a)(1-2) (2011) (training individuals for jobs and supplying tuition expenses); OHIO REV. CODE ANN. § 2743.48(E)(2)(c-d) (LexisNexis 2008) (providing for “any loss of wages, salary, or other earned income directly resulted from the wrongfully imprisoned individual’s arrest, prosecution, conviction, and wrongful imprisonment . . .” as well as any debts due to the department of corrections); TEX. CIV. PRAC. & REM. CODE ANN. § 103.052(a)(2) (West Supp. 2012) (explaining that compensation may be awarded for child support payments owed by the claimant that accrued during incarceration); VA. CODE ANN. § 8.01-195.11(C) (2007) (stating that compensation may be awarded for tuition reimbursement up to \$10,000 from a Virginia community college for career or technical training).

140. TEX. GOV’T CODE ANN. § 501.102(b)-(e) (West 2012).

141. *Id.* § 501.102(b)(1).

142. *Id.*

143. TENN. CODE ANN. § 9-8-108(a)(7)(G) (1999).

144. *Id.*



wrongful conviction.<sup>145</sup> There are no payback provisions in any of the state statutes regardless of whether an inmate collects money from any independent suit or source prior to making a state claim for compensation or after collection of compensation under a state claim.<sup>146</sup>

## B. *Prohibitions for Future Claims*

In a few states, the acceptance of an award of compensation bars any future civil redress or claims by the claimant against the state for the same wrongful conviction.<sup>147</sup> It can be argued that unless specifically stated, a prohibition against further action against the state does not include a prohibition of action against a county, city, or its employees in that state. Texas protects against this assumption by prohibiting an exoneratee from bringing a civil action against “any governmental unit or an employee of any governmental unit.”<sup>148</sup> Alabama protects only its Committee on Compensation; in doing so, it prohibits any civil action against the “committee or any of its members, for providing any reports, records, opinions or any actions or recommendations . . . .”<sup>149</sup> Additionally, anyone “acting in good faith and without negligence or malicious intent in providing information to the committee” is protected from civil liability.<sup>150</sup> Virginia is the most detailed in its prohibition and requires an exoneratee to “execute a release and waiver forever releasing” the state, agencies of the state, employees, political subdivisions, and others from

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145. See John Martinez, *Wrongful Convictions as Rightful Takings: Protecting “Liberty-Property,”* 59 HASTINGS L.J. 515 app. at 561–78 (2008) (summarizing existing state statutes on wrongful conviction compensation).

146. CONN. GEN. STAT. ANN. § 54-102uu (West 2009); FLA. STAT. ANN. §§ 961.01–.07 (West 2012); LA. REV. STAT. ANN. § 15:572.8 (2012); MISS. CODE ANN. §§ 11-44-1-15 (West 2009); MISS. CODE ANN. §§ 11-44-1 to 15 (LexisNexis 2011); NEB. REV. STAT. ANN. §§ 29-4601 to -4608 (West, Westlaw through the 102nd Legislature Second Regular Session 2012); UTAH CODE ANN. § 78B-9-405 (LexisNexis 2008); VT. STAT. ANN. tit. 13, §§ 5572–77 (2009); see John Martinez, *supra* note 145 (summarizing existing state statutes regarding wrongful conviction compensation).

147. See FLA. STAT. ANN. § 961.06(5) (West 2012) (including any state political subdivisions); MASS. GEN. LAWS ANN. ch. 258D, § 4 (West, Westlaw through Chapter 141, except for Chapter 139, of the 2012 2nd Annual Session) (explaining that the award is final); MO. ANN. STAT. § 650.058(1)(4) (Supp. 2012) (prohibiting any redress against any departments of the state and its agencies and employees and any political subdivisions and its employees); NEB. REV. STAT. ANN. §§ 29-4601 to -4608 (West, Westlaw through the 102nd Legislature Second Regular Session 2012) (making it clear that claimants are not prohibited from “making any other claim available against any other party or based upon any other theory of recovery . . . .” except as against the state); VT. STAT. ANN. tit. 13, § 5574(d) (2009) (asserting the award is conclusive on the claimant).

148. TEX. CIV. PRAC. & REM. CODE ANN. § 103.153(b) (West Supp. 2012).

149. ALA. CODE § 29-2-155 (LexisNexis 2003).

150. *Id.*

any future claims.<sup>151</sup> Connecticut affirmatively allows claimants to pursue “any other action or remedy . . . against the state and any political subdivision of the state . . . arising out of such wrongful conviction and incarceration.”<sup>152</sup> Iowa clarifies that a compensation award to claimant does not bar a claimant from bringing an action “based on any negligent or wrongful acts or omissions which arose during the period of the wrongful imprisonment, but which are not related to the facts and circumstances underlying the conviction or proceedings to obtain relief from the conviction.”<sup>153</sup>

## V. CONCLUSION

Nineteen of the twenty-one compensation statutes have only been enacted since 2001.<sup>154</sup> This may be the result of recent forensic science advances that have provided tangible proof that wrongful convictions actually do occur. Advocates for those individuals who have suffered the ramifications of being wrongfully convicted have made a rush to legislators seeking compensation to help these individuals get back on their feet.<sup>155</sup> Currently, there is no consistency among state statutes.

All exonerees, regardless of the state convicted, deserve some sort of state assistance in reclaiming their life. Unfortunately, depending on the state where the individual was convicted, some fare better than others upon exoneration. As this Article presents, states have addressed this issue in very different manners. Some states, like Texas, have been very generous in allowing compensation that fairly provides adequate support to assist the wrongfully convicted in the recovery of their lives. While no amount of compensation or assistance can ever truly rectify the disruption of their lives, a comprehensive, detailed compensation statute can certainly go a long way toward helping in the individual’s recovery and assimilation back into society.

A comprehensive look at the best of what other states have included in their statutes can help in advancing better compensation statutes. A good statute, in addition to a monetary award, at a minimum should include the following:

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151. VA. CODE ANN. § 8.01-195.12(B) (2007).

152. CONN. GEN. STAT. ANN. § 54-102uu(a)(2)(g) (West 2009).

153. IOWA CODE ANN. § 63A.1(5) (2011).

154. *See generally After Exoneration*, INNOCENCE PROJECT, <http://www.innocenceproject.org/know/After-Exoneration.php> (last visited Sept. 14, 2012) (outlining the state statutes).

155. *Id.*

- A simple, easy to understand filing process as in Illinois, Ohio, Louisiana, Maryland, and Missouri;<sup>156</sup>
- An allowance for attorney's fees or the appointment of counsel to assist a claimant in seeking compensation as in Iowa, Ohio, Vermont, Wisconsin, and Illinois;<sup>157</sup>
- A provision for the filing of a claim or the continuing collection of a compensation award by a surviving spouse, an heir, or a personal representative in the event of an exoneree's death;<sup>158</sup>
- A lengthy filing deadline or no filing deadline at all as in Illinois, Missouri, and Nebraska;<sup>159</sup>
- An offset prohibition for expenses incurred by the state or other political unit connected to claimants arrest, prosecution, and/or incarceration;
- A provision prohibiting the award from being treated as gross income under the Federal Tax Code as in California;<sup>160</sup>
- A provision exempting the compensation award from state taxes; and
- Provisions for services to help exonerees reintegrate smoothly back into the community: such as employment training, tuition assistance, health insurance coverage for medical and counseling services, back child support payments, and other reentry and reintegration services.

Hopefully this Article will assist those legislating to reform current deficient compensation statutes and those lobbying for legislation in states where no current compensation statutes exist. While existing statutes have strong points and weak points, awareness of these issues may assist in eventually obtaining uniform, comprehensive compensation statutes in every state.

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156. 705 ILL. COMP. STAT. ANN. 505/8 (LexisNexis Supp. 2012); OHIO REV. CODE ANN. § 2743.48(B)(1)–(2) (LexisNexis 2008); LA. REV. STAT. ANN. § 15:572.8(c), (i)–(j), (q) (2012); MO. ANN. STAT. § 650.058(1), (3) (Supp. 2012).

157. IOWA CODE § 663A.1(6)(a) (2011); OHIO REV. CODE ANN. § 2743.48(e)(2)(a) (LexisNexis 2008); VT. STAT. ANN. tit. 13, § 5575(b)(4) (2009); WIS. STAT. ANN. § 775.05(4) (West 2009); 705 ILL. COMP. STAT. ANN. 505/8(c) (LexisNexis Supp. 2012).

158. *E.g.*, TEX. CIV. PRAC. & REM. CODE ANN. § 103.001(c) (West 2012).

159. 705 ILL. COMP. STAT. ANN. 505/8 (LexisNexis Supp. 2012); MO. ANN. STAT. § 650.058 (Supp. 2012); NEB. REV. STAT. ANN. § 29-4607 (West, Westlaw through the 102nd Legislature Second Regular Session 2012).

160. CAL. PENAL CODE § 4904 (Deering 2008).

